IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 488 of 2005

BHUVANESH VYAS
V/S
INDIRA GANDHI NATIONAL OPEN UNI.& ANR.

Mr. KAMAL DAVE, for the appellant / petitioner

Mr. J.K. MISHRA, for the respondent

Date of Order : 28.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed by the appellant against the judgment of the learned Single Judge dt. 16.8.2005, whereby the petitioner's writ petition has been dismissed, on the ground of lack of territorial jurisdiction of this Court, leaving it open to the petitioner, to agitate his cause before the Court having jurisdiction, to entertain and adjudicate the cause of the petitioner.

The brief facts of the case are, that the petitioner by the writ petition sought to challenge the Annexure-10, and claiming all consequential benefits. The averments of the writ petition are, that the petitioner was appointed as a Senior Software Engineer in the Respondent

University, vide order dt. 1/2-6-1989 Annexure-1, which offer he accepted, and reported on duty. Then, he was confirmed vide Annexure-2, and he was posted in Computer Division under the Director of Computer Division. It may be observed here, that in the writ petition the petitioner has not pleaded at all, as to where he was appointed, and posted, though it appears, that he was appointed at Delhi, but the petitioner had not chosen to disclose this fact. Be that as it may, the averments of the writ petition further are, that on 4.9.1992 the petitioner applied for leave, to visit United States for 90 days, which leave was sanctioned by the Approving Officer on 7.9.1992. Then, it is alleged that the petitioner could not return in time, so he sent an application for extension of leave being Annexure-4, then the petitioner received a telegraphic message from the respondent no. 2 on 15.2.1993, informing, that his leave has not been sanctioned, so he should resume duties within 30 days, failing which his services shall stand terminated w.e.f. 22.9.1992. This is Annexure-5. According to the petitioner, he sought his inability to resume his duties, as he was under medical care, and sent an application along with medical certificate, which has been produced as Annexure-6 and 7. A look thereat shows, that it was sent on 23.2.1993, from United States. Then, it is alleged that as soon as the petitioner was fit he reported on duty on 1.6.1993, and continued to work till 10.6.1993, and thereafter he was denied to sign the register. Then, he

made a representation regarding telegraphic communication dt. 15.2.1993, vide representation dt. 3.6.1993, and when he was asked not to sign, then he approached the respondent no.2, who replied vide Annexure-10 that the petitioner's services stand terminated w.e.f. 22.9.1992. The representation dt. 3.6.1993 has been produced as Annexure-9.

A reply to this petition had been filed, alleging interalia, that the letter dt. 11.6.93 has been served on him at Delhi, termination order was issued at Delhi, and thus no cause of action, or part of cause of action, has arisen to the petitioner within the territorial jurisdiction of this Court, and the writ petition deserves to be dismissed. It was also pleaded that, the Headquarter of the University is at Delhi, and no cause of action arose in Rajasthan. Then, replying factual aspects also it was interalia pleaded, that the telegram dt. 15.2.1993 was a notice for one month, and that the medical certificate dt. 19.2.1993 was submitted without explaining the reason for staying after 22.12.1992, and he did not resume duties even after issuance of notice of termination, and therefore his services were terminated, and termination order was sent by registered air mail, which has been produced as Annexure R/1. The grounds taken in the writ petition have also been replied.

It may be mentioned here, that these averments given in the reply have not been controverted by filing a rejoinder, or otherwise. The reply was filed way back on 3.11.1997. The writ petition was dismissed by the learned Single Judge on 16.8.2005, as above, holding that this Court has no territorial jurisdiction to entertain the matter.

In this appeal, an application has been filed for taking additional affidavit and documents on record, deposing that the appellant was not aware about the legal niceties, and could not understand the relevance of the documents to the dispute raised in the writ petition, and therefore, could not file them earlier. With this it is pleaded in the affidavit, that the petitioner accepted offer of appointment at Jodhpur, was medically examined for appointment at Jodhpur, and then in para-12 it is pleaded, that vide communication dt. 11.6.93 the petitioner was informed that his services stand terminated w.e.f. 22.9.1992, which was served upon the petitioner personally at Delhi, the said termination order was sent to the petitioner at residential address at Jodhpur, which was received at Jodhpur on 14.9.1993. Then, in para-15 it is alleged, that the reply to the petitioner's letter dt. 17.6.93 was communicated at the petitioner's residence at Jodhpur, copy whereof has been produced as Annexure A/6. On the basis of these documents, and additional affidavit, it

was sought to be contended, that these documents have a relevant material bearing on the controversy, to show, that the part of the cause of action arose at Jodhpur, and therefore, the writ petition could not be dismissed for want of territorial jurisdiction.

Learned counsel for the respondent, on the other hand, supported the impugned order.

We have heard learned counsel for the parties, and considered the material.

In our view, in the first instance we do not find any sufficient ground to take these documents on record, as it was for the petitioner to take the basic pleading in the writ petition, as to how this Court had jurisdiction, rather the petitioner very cleverly omitted to disclose the geographical location of the place, with respect to his appointment, working, and termination from service. Not only this, it was way back in the year 1997, that objection in this regard was taken by the respondent, by filing the reply, and even if we were to assume that the petitioner was not aware of the niceties of the law, yet raising of the objection, by filing reply, was enough to make the petitioner aware of the niceties of the law, and should have woke up at that time itself, but nothing was done for good long 8 years. This is one aspect of the matter.

The other aspect of the matter, which is still more important is, that as noticed above, admittedly the order Annexure-10 dt. 11.6.93 has already been received by the petitioner at Delhi, and it is only alleged to have also been received at Jodhpur on 14.6.1993. Even at the cost of repetition, it may be observed, that the petitioner has cleverly not mentioned the date as to when did he receive the communication at Delhi, and in the ordinary course of things, it does show that the petitioner did receive that communication at Delhi, prior to receipt of communication at Jodhpur. Even otherwise, when admittedly the communication was received by the petitioner at Delhi, and simply because the employer, to be on safer side, chose to forward the copy on one more address, that cannot furnish any ground to the petitioner, to contend, that any part of the cause of action arose in Jodhpur, so as to confer territorial jurisdiction on this Court. Even so far as Annexure A/6 is concerned, this is in reference to the letter of petitioner dt. 17.6.93, informing, that his services have already been terminated, which was communicated to him under registered air mail. It is again different thing, that even in the representation of the petitioner Annexure-9, which is dated 3.6.1993 itself, the petitioner had pleaded facts, and appropriate reading thereof does show, that the petitioner was very well aware of his services having been terminated, and it is not the

case, that intimation was sent to the petitioner at Jodhpur.

In that view of the matter, even if we were to consider these documents on merits, we do not find them to be of any assistance to the petitioner.

Thus, considering from any stand point, we do not find any error in the impugned judgment of the learned Single Judge. The appeal is, therefore, dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/sushil/